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Supreme Court, U.S.
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95-1781
NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

STATE OF OHIO

Petitioner

-vs-

GARY BEEMAN and
SANDRA BEEMAN

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

STEPHANIE TUBBS JONES (#0015495)
Cuyahoga County Prosecutor

MELODY A. WHITE (#0015444)
Counsel of Record
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

4400

QUESTIONS PRESENTED

I.

WHETHER THE UNITED STATES CONSTITUTION PERMITS A CRIMINAL DEFENDANT TO SECURE AN ACQUITTAL BY USING A FALSE RECANTATION OF THE CRIME OBTAINED FROM THE VICTIM BY MEANS OF PSYCHOLOGICAL COERCION DURING A COURT ORDERED EVALUATION.

II.

WHETHER OHIO'S SYSTEM OF APPELLATE REVIEW AND ITS APPLICATION THEREOF VIOLATED THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

COUNSEL FOR SANDRA BEEMAN:

JOHN P. PARKER
4403 St. Clair Avenue
Cleveland, Ohio 44114

STAND-BY ATTORNEY:

JOHN STANARD
55 Public Square
Cleveland, Ohio 44114

GARY BEEMAN
33592 Vine Street
Eastlake, Ohio 44095

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(1) Lake County Juvenile Court - 7/28/92 (App. A)
(2) Cuyahoga County Common Pleas Court - 4/22/94 (App. D)
(3) Eighth District Court of Appeals of Ohio - 6/13/94 (App. I/J)
(4) State v. Beeman (1995), 74 Ohio St. 3d 49 (App. L)

BASIS FOR JURISDICTION

The judgment of the Supreme Court of Ohio was entered on November 22, 1995. Jurisdiction is conferred upon this Court by 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) Fourteenth Amendment, United States Constitution
(2) First Amendment, United States Constitution
(3) Fourth Amendment, United States Constitution
(4) Fifth Amendment, United States Constitution
(5) Sixth Amendment, United States Constitution
(6) Ninth Amendment, United States Constitution
(7) Ohio Revised Code §2505.02
(8) Ohio Revised Code §2945.67
(9) Ohio Rule of Criminal Procedure 12(J)

STATEMENT OF THE CASE AND FACTS

Gary and Sandra Beeman, Respondents herein, are the biological parents of Christian Beeman, who was born April 29, 1987. In late January, 1992, Christian disclosed to her aunt that her father had been sexually molesting her. During the next six months, Christian repeated the allegations to her mother, grandmother, two day care teachers, one psychologist, and at least three social workers employed by governmental departments of Human Services. During the course of the investigation, the Beemans moved from Cuyahoga County to Lake County, Ohio.

Two State actions were initiated as a result of Christian's allegations. On July 10, 1992, in Case No. 92JUV1593, the Lake County Juvenile Court granted legal custody of Christian to the Lake County Department of Human Services and approved her placement with her maternal grandmother, Lorene Pickering. On August 5, 1992, in Case No. CR 285674, the Cuyahoga County Grand Jury charged Gary Beeman with Rape and other sexual offenses committed against his daughter, and it charged Sandra Beeman with Child Endangering and Obstruction of Justice.

On July 23, 1992, Respondents filed a "Parents' Motion for Independent Psychological Evaluation of Christian Gabrielle Beeman" by Minnesota defense psychologist Ralph Underwager in order to obtain an opinion as to whether or not she had been sexually abused and to determine the extent and effect of adult social influence upon the child's allegations. On July 28, 1992, the Lake County Juvenile Court granted the parents' motion over the objection of the legal custodian of Christian, and without seeking the advice of her guardian ad litem. (App. A).

Ralph Underwager is a leading force behind many of the organizations in this country which are stirring up public hysteria over "false" accusations of child abuse and attempting to silence

victims everywhere. In 1991, he was interviewed by the Editor-in-Chief of *Paidika*, the Journal of Paedophilia, published in Amsterdam, the Netherlands. The Editorial Board of this publication includes the editor of the NAMBLA Bulletin (North American Man/Boy Love Association). The interview of Ralph Underwager was published in Vol. 3, No. 1, Issue 9 (1993). When asked, "Is choosing paedophilia for you a responsible choice for the individual?", Mr. Underwager answered:

> "RU: *Certainly it is responsible.* . . .Paedophiles spend a lot of time and energy defending their choice. I don't think that a paedophile needs to do that. Paedophiles can boldly and courageously affirm what they choose."

Mr. Underwager later stated:

> "RU: The solution that I'm suggesting is that paedophiles become much more positive. They should directly attack the concept, the image, the picture of the paedophile as an evil, wicked, and reprehensible exploiter of children. . . .What we see going on in the United States is the most vitriolic and virulent anti-sexuality I know of in our history. It may take people being arrested. *Revolutionaries have always*

risked arrest." P. 6-7.

On August 6, 1992, five-year-old Christian Beeman was forced by court order to submit to this "evil, wicked, and reprehensible exploiter of children." The interview was recorded and has been transcribed. The interview took place at her grandmother's home and lasted for approximately three hours without a break, from 10:00 A.M. until almost 1:00 P.M. Her grandmother was not permitted to stay with her.

Ralph Underwager looks like Santa Claus and takes full advantage of that fact. It is no small coincidence that he compared himself to Santa Claus very early in the interview. He then proceeded to bribe her with her favorite toys and an offer to replace her lost kittens. He used the story of Cinderella to suggest that her parents would have to go away and she would be raised by mean people. He used a story of Bambi to threaten that she might never see her mommy again, and he then hinted that he could reunite her with her parents. He ignored more than 40 objections by Christian to talking to him about her father, and he refused her requests to stop talking. He even ignored and refused her requests for lunch, telling her he wanted to hear some more things about daddy.

After lunch was refused, Christian said she didn't want to talk. Underwager replied, "Well, let's get it over with then. Just tell us anything --." A guardian *ad litem* appointed by the Lake County Juvenile Court, Jim Farrell, was permitted to attend the interview. He sat idly by while Christian was being coerced and on occasion even participated in it. During the course of the interview, Christian recounted at length an episode where she had fun with her parents, who chased and tickled her. Underwager reintroduced this subject and used Christian's focus on it to obtain the alleged recantation:

"RU: Are you saying that's ALL they did? Christian? If I understand you, you said they did it RIGHT, they tickled you. Are you saying that's ALL they did?

CB: No!* * *

RU: . . .Now ONE more thing and then we can quit, okay? * * *

CB: (Stamps foot). Ho-ooouh!

JF: Oh, it will be easy. Let's just talk about one more thing.

CB: Nooouh!

RU: We need to know IF the things that other people say your mommy and daddy did actually happened. Did they do them?

CB: (Playing piano). No. They only tickled me.

JF: What do some people think happened?

CB: I don't know."

Christian finally said what Mr. Underwager was paid to get her to say -- they only tickled me. While Christian played the piano, Underwager said to Mr. Farrell, "That's the cue -- that's the word and language cue."

In a report submitted to the Cuyahoga County Prosecutor's Office on November 2, 1992, Mr. Underwager claimed that Christian's response of "No" to the question of whether her parents did the things that other people were saying were wrong constituted

a significant recantation. On December 4, 1992, the State filed a Motion to Suppress Statements, arguing that this alleged recantation was obtained in violation of the First, Fifth and Fourteenth Amendments to the United States Constitution and various sections of the Ohio Constitution. On February 24, 1994, the State filed a Renewed and Supplemental Motion to Suppress Statements/Evidence, adding violations of the Fourth and Ninth Amendments of the United States Constitution.

A hearing was finally held on these motions between April 18, 1994 and April 20, 1994. During this hearing, Lorene Pickering testified that Christian wanted her to stay during the interview, but she was not permitted to do so. Dr. Sue White, a national expert in interviewing children and assessing abuse, testified to the many inappropriate methods utilized by Mr. Underwager, including leading/suggestive questions, disconfirmation of Christian's responses and psychological coercion. She concluded that there was no reliability to the assertion that Christian's statements were a "recantation." She testified that this was not an independent evaluation, and Mr. Underwager's "agenda" for this interview was clearly aimed at getting Christian to say her father had not abused her.

On April 20, 1994, the trial court summarily overruled the State's Motions to Suppress the statements and fruits of this interview, and the journal entry reflecting this judgment was filed April 22, 1994. (App. D/E). On April 29, 1994, the State filed a Notice of Appeal, contending that the appeal was taken of right. (App. F/G). The State complied with Crim. R. 12(J) and certified that the ruling on the Motion to Suppress had rendered the State's proof with respect to the charges so weak in its entirety that any possibility of effective prosecution had been destroyed. The State had no medical evidence, no eyewitness and no confession -- just the child's allegation. The "recantation" essentially nullified the State's case.

On May 20, 1994, the Court of Appeals denied an alternative Motion for Leave to Appeal, but made no ruling as to whether the appeal was one of right. (App. H). On May 31, 1994, the State filed a Motion for Clarification on the issue of an appeal of right and a Supplemental Motion to Consolidate the individual appeals of right filed against each defendant. On June 13, 1994, the Court of Appeals denied the Motion for Clarification, and it denied the Supplemental Motion to Consolidate as moot. (App. I/J). Petitioner was given no opportunity to raise the Federal questions in the Court of Appeals.

On October 19, 1994, the Ohio Supreme Court accepted petitioner's appeal from the dismissal entered by the lower court. Petitioner raised all of the foregoing constitutional issues as well as the additional violations of the Fourteenth Amendment regarding the appeal of right. (App. K). On November 22, 1995, the Ohio Supreme Court, in a one sentence opinion, affirmed the dismissal by the court below. (App. L).

REASONS FOR GRANTING THE WRIT

I. THE UNITED STATES CONSTITUTION DOES NOT PERMIT A CRIMINAL DEFENDANT TO SECURE AN ACQUITTAL BY USE OF A FALSE RECANTATION OF THE CRIME(S) WHICH WAS ELICITED FROM THE VICTIM BY MEANS OF PSYCHOLOGICAL COERCION DURING A COURT ORDERED EVALUATION.

As early as 1896, the Supreme Court declared that statements were inadmissible "if made under any threat, promise, or encouragement of any hope or favor. . .or compulsion or inducement of any sort." Wilson v. United States (1896), 162 U.S. 613, 622-623. The law is quite clear that statements

extracted from individuals through psychological coercion are inadmissible. Brown v. Mississippi (1936), 297 U.S. 278; Lyons v. Oklahoma (1944), 322 U.S. 596; Blackburn v. United States (1959), 361 U.S. 1991; Ashcraft v. Tennessee (1944), 322 U.S. 143; Rogers v. Richmond (1961), 356 U.S. 534; Spano v. New York (1959), 360 U.S. 315; Haynes v. Washington (1963), 373 U.S. 503; Haley v. Ohio (1948), 332 U.S. 596.

Although these cases involved statements of criminal defendants, the law has started to recognize that a criminal defendant may not violate an individual's constitutional rights under the pretext of receiving a fair trial. Georgia v. McCollum (1992), 505 U.S. 42, 112 S. Ct. 2348.

A. STATE ACTION

Custody, supervision of and access to Christian Beeman was controlled by the Lake County Juvenile Court. The defendants invoked the direct power of the State by requesting that court to order this evaluation. The evaluation could not and would not have occurred without the court order. Subpoenaes and court orders constitute State action. Timson v. Weiner (S.D. Oh., 1975), 395 F. Supp. 1344. And a psychologist who is appointed by a court to examine a child is a State actor. Kurzawa v. Mueller (6th Cir. 1984), 732 F. 2d 1456; Myers, et al. v. Scott County, et al. (D. Minn. 1985), 618 F. 2d 1534. See also, Dennis v. Sparks (1980), 449 U.S. 24.

B. STANDING

A litigant may raise a claim on behalf of a third party if the litigant has suffered a concrete injury, he has a close relationship to the third party, and there exists some hindrance to the third party's ability to protect its own interest. Georgia v. McCollum, 112 S. Ct. at 2357. The State suffers a concrete injury when the

fairness and integrity of its own judicial process is undermined, Id., which is certainly the case when a defendant obtains an acquittal based on a false recantation of the crime.

If the State, as the representative of all its citizens may assert the constitutional rights of jurors, Id., it certainly may assert the constitutional rights of a victim, with whom it has an even closer relationship, and particularly when the victim is a child in State custody. If the barriers to a suit by an excluded juror are "daunting," Id., the barriers are even more formidable for a child, especially when the State actor(s) would be cloaked with judicial immunity.

C. CONSTITUTIONAL HARM

1. FIFTH AMENDMENT

The Fifth Amendment to the Constitution of the United States provides that no person shall be compelled in any criminal case to be a witness against himself. The protection extends to witnesses. Boyd v. United States (1886), 116 U.S. 616, 636. Moreover, that protection is not limited to the courtroom. Miranda v. Arizona (1966), 384 U.S. 436.

Christian Beeman was in the "custody" of these two men for three hours. She was given no choice between silence and speech and her statements were the result of coercion, suggestion and despair.

2. FOURTH AMENDMENT

A seizure occurs when a person is restrained of liberty by a governmental show of authority. Terry v. Ohio (1968), 392 U.S. 1, or when there is submission to the assertion of authority. California v. Hodari (1991), 113 L. Ed. 2d 690, 697. A seizure

can involve the taking of intangible items, such as conversations. Berger v. New York (1967), 388 U.S. 41. The reasonableness of personal intrusions requires that the individual's interest in privacy and security must be weighed against society's interest in conducting the procedure. Winston v. Lee (1985), 470 U.S. 753.

In the absence of medical evidence, a psychologist's opinion as to whether a child has been sexually abused is nothing more than his or her opinion of the credibility of the child's statements. Underwager himself concedes that in the great majority of sexual abuse cases, physical evidence is often ambiguous or non-existent, and the issue comes down to whether you believe the alleged perpetrator or the alleged victim. "This naturally leads to psychological assessments of the child's credibility." Wakefield, H. and Underwager, R., ACCUSATIONS OF CHILD SEXUAL ABUSE, 9-12, 1988. But an expert's opinion as to the credibility of a child's statements is inadmissible as evidence. State v. Boston (1989), 46 Ohio St. 3d 108; State v. Moreland (1990), 50 Ohio St. 3d 58.

The court order permitting the seizure of Christian Beeman was based on a search for inadmissible evidence and was therefore unreasonable. The evaluation was ordered over the objection of Christian's legal custodian, her objections to talking were never honored, and she was restrained of her liberty as she submitted to court order and adult governmental authority. Society has no legitimate interest in conducting a mental search and physical seizure in order to obtain evidence which lacks scientific reliability and is otherwise inadmissible at trial. In the absence of a history of mental illness, a court ordered psychological evaluation is a clear violation of the Fourth Amendment.

3. FIRST, NINTH AND FOURTEENTH AMENDMENTS

Freedom of speech includes freedom to be silent. Christian's statements that she did not want to talk were ignored. Forcing her to undergo an alleged psychological evaluation over the objection of her legal custodian violated her right to privacy.

There is no provision in the Ohio criminal code or criminal rules for mental examinations of victims. The criminal courts allegedly recognize "the State's interests in protecting a victim from harassment and in discouraging the 'unfortunate tendency' in rape cases to try the victim rather than the alleged offender." State v. Tomlinson (1986), 33 Ohio App. 3d 278, 279. An examination is permitted only "when the mental condition of the victim-potential witness is a contested, essential element of the crime charged." State v. Zeh (1987), 31 Ohio St. 3d 99, para. two of the syllabus. Christian's mental condition was not a contested, essential element of any of the crimes charged. Juvenile courts routinely and arbitrarily order psychological assessments of children who allege sexual abuse and thereby deny them the equal protection of the law as it relates to adults.

D. LIBERTY INTERESTS

1. This Court in In re Gault (1967), 387 U.S. 1, 49, had no difficulty in ruling that deprivation of liberty included the "civil" commitment a child might face in juvenile proceedings, stating that, "the privilege does not turn upon the type of proceeding. . .but upon the nature of the statement or admission and the *exposure which it invites*." (Emphasis added). When a child "recants" a prior allegation of sexual abuse, he or she could be charged with Falsification under R.C. §2921.13 or with Making a False Report of Child Abuse under R.C. §2921.14. There is no statutory age limit in Ohio for the initiation of criminal

proceedings. Christian Beeman could be charged with a crime. Christian's Fifth Amendment rights were clearly violated, thereby subjecting her to potential civil commitment by a juvenile court. When a child of such tender years is compelled to recant, however, the *exposure which it invites* should not be limited to a deprivation of liberty defined only by physical walls of confinement.

2. It is well-settled that fundamental liberty interests include the right to bodily integrity and the right of children to be free from sexual abuse. Ingraham v. Wright (1977), 430 US. 651; Albright v. Oliver (1994), ___ U.S. ___, 114 S. Ct. 807; United States v. Lanier (6th Cir. 1994), 33 F. 3d 639; In re Schmidt (1986), 25 Ohio St. 3d 331. Condemnation to a life of sexual assaults in which a child is surrounded by psychological walls of silence, isolation, fear, despair and shame is no less "confining" than the walls of a cell. Permitting Christian's parents to obtain an acquittal by use of a false recantation will condemn her to such a life.

E. FUNDAMENTAL FAIRNESS

As early as 1887, Justice Field stated that the criminal justice system "requires not only freedom from any bias against the accused, but also from any prejudice against his prosecution. Between him and the State the scales are to be evenly held." Hayes v. Missouri (1887), 120 U.S. 68, 70. The Sixth Amendment grants a criminal defendant the right to have a fair trial, but it does not authorize a right to present what is essentially perjured testimony based upon statements obtained in violation of the victim's constitutional rights.

If this interview had been conducted in an appropriate fashion and an arguably reliable recantation had been forthcoming, the balancing of Christian's rights against the rights of the criminal defendants would be difficult indeed. But the evidence

demonstrates that this alleged recantation is neither factually nor legally reliable. If it is an "affront to justice to argue that a fair trial includes the right to discriminate against a group of citizens based upon their race," McCollum, 112 S. Ct. at 2358, it is surely an "affront to justice" to argue that a fair trial includes the right to present an inherently unreliable recantation of a crime which was elicited from a child by psychological coercion.

In Mooney v. Holohan (1935), 294 U.S. 103, 112, this Court recognized that due process:

> ". . .is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretence of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."

It follows that a criminal defendant's procurement of an acquittal by the use of false or perjured testimony is just as inconsistent with the rudimentary demands of justice. If such a deliberate deception of a judge or a jury is allowed, then the court becomes "a willing participant in a scheme that could only undermine the very foundation of our system of justice -- our citizen's confidence in it." McCollum, 112 S. Ct. at 2354.

II. OHIO'S SYSTEM OF APPELLATE REVIEW AND ITS APPLICATION THEREOF VIOLATED THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT.

Although a State is not constitutionally required to provide appellate courts or appeals of right, once it has granted appellate review in criminal cases, "the procedure used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution." Evitts v. Lucey (1985), 469 U.S. 387, 393; Griffin v. Illinois (1956), 351 U.S. 12.

A. FUNDAMENTAL FAIRNESS

The Due Process Clause permits this Court to proscribe a State procedure which "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Medina v. California (1992), 505 U.S. 437, 112 S. Ct. 2572, 2577. The great purpose of the due process clause is "to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen," Dent v. West Virginia (1889), 129 U.S. 623, 626, and is "intended as an additional security against the arbitrary deprivation of life and liberty. . ." Hagar v. Reclamation District (1884), 111 U.S. 569, 572. Nothing could be more fundamental than the concept of a fair trial.

Under Ohio law, a defendant may appeal as a matter of right any alleged constitutional violations if convicted, and the State may file an interlocutory appeal as a matter of right from any decision which "grants" a defendant's Motion to Suppress as long as the State fulfills the certification elements of Crim. R. 12(J). Fundamental fairness would seem to dictate that the State can appeal an adverse decision on its Motion to Suppress unreliable evidence obtained by the defendant by violating a victim's

constitutional rights. If not, any hearing on a State's Motion to Suppress will be reduced to a meaningless ritual, a pretense, and a sham. Evitts v. Lucey, supra; Moore v. Dempsey (1923), 261 U.S. 86; United States, ex rel. Montgomery v. Ragen (N.D. Ill. 1949), 86 F. Supp. 382.

Ohio Revised Code §2945.67 and Crim. R. 12(J) provide the State with an appeal of right when a Motion to Suppress has been granted. The notes of the Ohio Legislative Service Commission state, "This section permits the State to appeal an adverse decision on a motion to suppress evidence in a criminal case." In State v. Malinovsky (1991), 60 Ohio St. 3d 20, 23, the Ohio Supreme Court noted that, "the adoption of Crim. R. 12(J) and enactment of R.C. §2945.67 were designed to preclude the loss of a worthy criminal case solely due to an erroneous ruling by a trial court."

But in a one sentence opinion, it simply stated that the judgment from which the State appealed was not a final appealable order. Ohio Revised Code §2505.02 defines a "final order" as one which affects a substantial right made in a special proceeding or one that affects a substantial right in an action which in effect determines the action and prevents a judgment. The State of Ohio has long held that a pre-trial proceeding on a Motion to Suppress Evidence in a criminal case is a "special proceeding" within the meaning of R.C. §2505.02, and that loss of the ability to effectively prosecute a case affects the substantial right to prosecute criminals. State v. Collins (1970), 24 Ohio St. 2d 107; State v. Buckingham (1980), 62 Ohio St. 2d 14; State v. Davidson (1985), 17 Ohio St. 3d 132; State v. Malinovsky, supra.

Whether the substantial right which is involved is Christian Beeman's ability to be free from sexual abuse or the State's right to prosecute criminals, it is quite clear that the order appealed from was a "final order." Ohio's arbitrary interpretation of "final

order" violates the concept of fundamental fairness. The effect of its decision is to institutionalize a defendant's right to violate the constitutional rights of others. Double jeopardy would preclude any State appeal once the defendants are acquitted. Absent relief from this Court, Christian Beeman will be deprived of her constitutional rights.

B. PROCEDURAL DUE PROCESS

If the Beemans obtain an acquittal because of a deliberate deception of the jury, Christian will be deprived of her liberty to live a life free of molestation and abuse. The process that is due depends on the risk of an erroneous deprivation of the protected liberty interest. Ingraham v. Wright, supra. The risk of an erroneous deprivation of Christian's liberty interests by the use of inherently unreliable evidence at trial is high indeed. A post-deprivation remedy would mean nothing.

The test for evaluating procedural due process claims was set forth in Mathews v. Eldridge (1976), 424 U.S. 319 at 335:

> "[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

Christian's fundamental liberty interest to be free from sexual abuse will in all likelihood be denied because of Ohio's "procedure." There would be no value to an appeal once the Beemans are acquitted. The government's interest in a fair trial cannot be denied, and an occasional interlocutory appeal will not cause any significant fiscal or administrative burdens.

C. EQUAL PROTECTION

The discriminatory denial of a statutory right of appeal is a violation of the equal protection clause. Cochran v. Kansas (1942), 316 U.S. 255. Once appeals are afforded, they cannot be granted to some litigants and capriciously or arbitrarily denied to others. Lindsey v. Normet (1972), 405 U.S. 56; In re Brown (3rd Cir. 1971), 439 F. 2d 47; Javits v. Stephens (S.D. N.Y. 1974), 382 F. Supp. 131.

In In re Brown, supra, the Court ruled that granting infants only a discretionary appeal while granting adults an appeal of right constituted a denial of equal protection. In this case, Ohio has said that hardened criminals have a right to appeal, but child victims do not. Although Ohio Revised Code §2945.67 may be nondiscriminatory on its face, it is grossly discriminatory in its application. There is no compelling governmental interest which justifies allowing only hardened criminals to appeal a denial of constitutional rights. The concept of a fair trial does not include a defendant's right to violate a victim's constitutional rights.

CONCLUSION

This case presents a classic example of the abuse that children are suffering at the hands of the system. Psychological evaluations by defense "experts" of allegedly sexually abused children are a booming business where justice is being bought and sold. We are discriminating against children and treating them as pieces of evidence whose innermost thoughts and feelings can be probed by *alleged scientists* at the mere whim of those who are accused of abusing them in the first place.

"Psychological evaluations" are more often than not being used as "investigative tools." As the court in Gault stated:

> "'The powers of the Star Chamber were a trifle in comparison with those of our juvenile courts. . .' The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment. The absence of procedural rules based upon constitutional principle has not always produced fair, efficient, and effective procedures. Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness."

387 U.S. at 18-19, quoting in part Dean Pound, Foreward to Young, Social Treatment in Probation and Delinquency (1937), p. xxvii. The reasonable basis for allowing the "classification" of children was based on their need for protection. We are instead throwing them to the wolves.

"If the Government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Mapp v. Ohio (1961), 367 U.S. 643, 659, citing Olmstead v. United States (1928), 277 U.S. 438, 485. The only effective available way to compel respect for the Constitution is by removing the incentive to disregard it. Elkins v. United States (1960), 364 U.S. 206, 217. If Christian Beeman is to be afforded her constitutional rights, the alleged recantation extracted from her by psychological coercion must be suppressed, and she must be protected by an appeal as a matter of right. "To hold otherwise is to grant the right but in reality to withhold its privilege and enjoyment." Mapp, supra, 656.

Respectfully submitted,

STEPHANIE TUBBS JONES (#0015495)
Cuyahoga County Prosecutor

MELODY A. WHITE (#0015444)
Counsel of Record
Assistant Prosecuting Attorney
The Justice Center, 1200 Ontario St.
Cleveland, Ohio 44113
(216) 443-7800

IN THE COURT OF COMMON PLEAS
JUVENILE DIVISION
LAKE COUNTY, OHIO

IN RE:	)	CASE NO. 92 JUV. 1593
CHRISTIAN G. BEEMAN,	)	JUDGE WILLIAM WEAVER
ALLEGED ABUSED/ NEGLECTED/AND DEPENDENT CHILD	)	JUDGMENT ENTRY

. . .Parents filed a Motion for independent psychological evaluation of the child,. . . . The Prosecuting Attorney also opposed this Motion. . . The Court believes that such examination in this case would be proper and could very well provide information and/or evidence, and that it ought to be permitted.

IT IS THEREFORE ORDERED that the Parents' Motion for independent psychological examination be granted, provided that all costs are paid for by the Parents, and that the child shall not be required to travel to the psychologist in Minnesota but that as represented by counsel for the Parents, the psychologist will interview the child in this local area. . . .

IT IS SO ORDERED.

"S/_____"
07/28/92 WILLIAM W. WEAVER, JUDGE

A

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, Plaintiff	)	CASE NO. CR 285674
	)	JUDGE R. McMONAGLE
-vs-	)	
	)	**STATE'S MOTION TO SUPPRESS STATEMENTS**
GARY BEEMAN, and SANDRA BEEMAN, Defendants	)	

Now comes the State of Ohio, by and through Stephanie Tubbs Jones, Prosecuting Attorney of Cuyahoga County, Ohio, and moves this Honorable Court, pursuant to the First, Fifth and Fourteenth Amendments to the United States Constitution and Sections 1, 10, 11 and 16 of Article One of The Ohio Constitution, for an Order suppressing the "recantation" by the child victim in this case for the reasons set forth in the Brief attached hereto and incorporated herein.

Respectfully submitted,

STEPHANIE TUBBS JONES
Cuyahoga County Prosecutor

12/04/92

"S/_____"
MELODY A. WHITE (#015444)

B

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,	) CR 285674
Plaintiff	) JUDGE KATHLEEN SUTULA
vs.	) **STATE'S RENEWED AND SUPPLEMENTAL MOTION TO**
GARY BEEMAN and SANDRA BEEMAN,	) **SUPPRESS STATEMENTS/ EVIDENCE. EVIDENTIARY**) **HEARING REQUESTED**
Defendants	)

Now comes the State of Ohio, by and through Stephanie Tubbs Jones Prosecuting Attorney of Cuyahoga County, Ohio, and moves this Honorable Court to suppress any evidence relating to or derived from the interview of Christian Beeman by Ralph Underwager which occurred on August 6, 1992, pursuant to the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution and Sections 1, 10, 11, 14 and 16 of Article One of The Ohio Constitution, for the reasons set forth in the attached brief and the reasons set forth in the brief attached to the State's Motion to Suppress Statements which was filed December 4, 1992.

Respectfully submitted,

STEPHANIE TUBBS JONES
CUYAHOGA COUNTY PROSECUTOR

02/24/94 "S/_____"
MELODY A. WHITE (#0015444)

C

STATE OF OHIO	)	**IN THE COURT OF COMMON PLEAS**
CUYAHOGA COUNTY	)	
STATE OF OHIO	)	**CASE NO. CR 285674**
Plaintiff	)	
vs.	)	
GARY BEEMAN	)	
Defendant	)	

JOURNAL ENTRY

. . .State's Motions to Suppress Statements/Evidence from interview of Christian Beeman by Doctor Underwager is overruled. . .

04/22/94 "S/_____"
WILLIAM E. MAHON, JUDGE

D

STATE OF OHIO **IN THE COURT OF COMMON PLEAS**

CUYAHOGA COUNTY

STATE OF OHIO **CASE NO. CR 285674**

Plaintiff

vs.

SANDRA BEEMAN

Defendant

JOURNAL ENTRY

. . .State's Motions to Suppress Statements/Evidence from interview of Christian Beeman by Doctor Underwager is overruled. . .

04/22/94 "S/_____"
WILLIAM E. MAHON, JUDGE

E

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, Plaintiff-Appellant	)	CASE NO. CR 285674
	)	JUDGE MAHON
-vs-	)	
	)	NOTICE OF APPEAL
GARY BEEMAN, Defendant-Appellee	)	

Now comes the State of Ohio and hereby gives Notice of Appeal to the Court of Appeals for Cuyahoga County (Eighth Judicial District of Ohio) from the judgment of the Court of Common Pleas for Cuyahoga County, Ohio, journalized on April 22, 1994, overruling the State's Motion(s) to Suppress Statements/Evidence. The State contends that this appeal is taken as of right pursuant to Section 2945.67 of the Ohio Revised Code.

Said appeal is on questions of law.

Respectfully submitted,

STEPHANIE TUBBS JONES
Cuyahoga County Prosecutor

04/29/94 "S/_____"
MELODY A. WHITE (0015444)

F

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, Plaintiff-Appellant	)	CASE NO. CR 285674
	)	JUDGE MAHON
-vs-	)	
	)	**CERTIFICATION OF PROSECUTING ATTORNEY PURSUANT TO OHIO CRIMINAL RULE RULE 12(J)**
GARY BEEMAN, Defendant-Appellee	)	

The Prosecuting Attorney certifies to the Court that this appeal is not taken for the purpose of delay, but on the contrary that the Court's overruling of the State's Motion(s) to Suppress Statements/Evidence has rendered the State's proof with respect to the pending charges so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed. In fact, the evidence in question, an inherently unreliable "recantation" illegally obtained in violation of the child victim's constitutional rights, essentially nullifies the very allegations that any crime occurred, thereby debilitating the vitality of the State's case and rendering it virtually impossible to obtain a conviction.

Respectfully submitted,

STEPHANIE TUBBS JONES
Cuyahoga County Prosecutor

04/29/94 "S/_____"
MELODY A. WHITE (#0015444)

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, Plaintiff-Appellant	)	CASE NO. CR 285674
	)	JUDGE MAHON
-vs-	)	
	)	**NOTICE OF APPEAL**
SANDRA BEEMAN, Defendant-Appellee	)	

Now comes the State of Ohio and hereby gives Notice of Appeal to the Court of Appeals for Cuyahoga County (Eighth Judicial District of Ohio) from the judgment of the Court of Common Pleas for Cuyahoga County, Ohio, journalized on April 22, 1994, overruling the State's Motion(s) to Suppress Statements/Evidence. The State contends that this appeal is taken as of right pursuant to Section 2945.67 of the Ohio Revised Code.

Said appeal is on questions of law.

Respectfully submitted,

STEPHANIE TUBBS JONES
Cuyahoga County Prosecutor

04/29/94 "S/_____"
MELODY A. WHITE (0015444)

G

IN THE COURT OF COMMON PLEAS
CRIMINAL DIVISION
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, Plaintiff-Appellant	CASE NO. CR 285674
-vs-	JUDGE MAHON
SANDRA BEEMAN, Defendant-Appellee	**CERTIFICATION OF PROSECUTING ATTORNEY PURSUANT TO OHIO CRIMINAL RULE 12(J)**

The Prosecuting Attorney certifies to the Court that this appeal is not taken for the purpose of delay, but on the contrary that the Court's overruling of the State's Motion(s) to Suppress Statements/Evidence has rendered the State's proof with respect to the pending charges so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed. In fact, the evidence in question, an inherently unreliable "recantation" illegally obtained in violation of the child victim's constitutional rights, essentially nullifies the very allegations that any crime occurred, thereby debilitating the vitality of the State's case and rendering it virtually impossible to obtain a conviction.

Respectfully submitted,

STEPHANIE TUBBS JONES
Cuyahoga County Prosecutor

"S/_____"
MELODY A. WHITE (#0015444)

04/29/94

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT

Case No: 67207/67208 Date: 05/20/1994
STATE OF OHIO VS. GARY
AND SANDRA BEEMAN

MOTION BY APPELLANT FOR
LEAVE TO APPEAL IS DENIED.

WEAVER, J., C., P.J.

NAHRA, J., CONCUR

H

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT

Case No: 67207/67208 Date: 06/13/1994
STATE OF OHIO VS. GARY
AND SANDRA BEEMAN

MOTION BY APPELLANT FOR
REINSTATEMENT AND/OR
CLARIFICATION DENIED.

NAHRA, J., P.J.

PATTON, J., J., CONCUR

I

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT

Case No: 67207 Date: 06/13/1994
STATE OF OHIO VS.
SANDRA BEEMAN

SUPPLEMENTAL MOTION BY
APPELLANT TO CONSOLIDATE
APPEALS DENIED AS MOOT.

NAHRA, J., P.J.

PATTON, J., J., CONCUR

J

NOS. 94-1483/94-1484

IN THE SUPREME COURT OF OHIO

BRIEF OF APPELLANT ON THE MERITS

TABLE OF CONTENTS

PROPOSITION OF LAW NO. I:
A PSYCHOLOGICALLY COERCED RECANTATION OBTAINED FROM A VICTIM DURING A COURT-ORDERED PSYCHOLOGICAL EVALUATION MUST BE SUPPRESSED.

PROPOSITION OF LAW NO. II:
THE DENIAL OF A STATE'S MOTION TO SUPPRESS EVIDENCE WHICH WAS OBTAINED UNCONSTITUTIONALLY AND WHICH ESSENTIALLY DESTROYS OR NULLIFIES THE STATE'S CASE IS AN ORDER FROM WHICH THE STATE MAY APPEAL AS A MATTER OF RIGHT.

PROPOSITION OF LAW NO. III:
FORCING A VICTIM-POTENTIAL WITNESS TO SUBMIT TO A DEFENDANT'S PSYCHOLOGICAL EVALUATION WHERE THE MENTAL CONDITION OF THE VICTIM IS NOT AN ESSENTIAL ELEMENT OF THE CRIME CHARGED AND WHERE THERE IS NO HISTORY OF MENTAL ILLNESS, CONSTITUTES AN UNREASONABLE SEARCH AND SEIZURE OF THE VICTIM-POTENTIAL WITNESS.

PROPOSITION OF LAW NO. IV:

A COURT-ORDERED PSYCHOLOGICAL EVALUATION OF A VICTIM-WITNESS OVER HER OBJECTION VIOLATES THE RIGHT TO PRIVACY, HER RIGHT TO SILENCE, AND DENIES HER EQUAL PROTECTION OF THE LAW.

Text:

United States Constitution, Fourth Amendment 27

United States Constitution, First Amendment 30

United States Constitution, Fifth Amendment 32

United States Constitution, Ninth Amendment 30

United States Constitution, Fourteenth Amendment 32

"When a state has created appellate courts, . . . the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution." Evitts v. Lucey (1985), 469 U.S. 387, 393; 83 L. Ed. 2d 821, 827-828. The Beemans can address any constitutional concern with an appeal of right if convicted. App. R. 4(B), Crim. R. 32(2)(a). They will be deprived of no liberty interest if acquitted. The State has no appeal if the defendants gain an acquittal, due to the Double Jeopardy Clause. Without an interlocutory appeal of right, Christian Beeman faces deprivation of her liberty without due process of law. (P. 25-26)

STATE v. BEEMAN

[*State v. Beeman* (1995), ____Ohio St. 3d ___]

Appeals from the Court of Appeals for Cuyahoga County, Nos. 67207 and 67208

The judgment of the court of appeals is affirmed for the reason that there is no final appealable order.

Moyer, C.J., Douglas, Wright, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Resnick, J., dissents and would reverse the judgment of the court of appeals.

L

THE SUPREME COURT OF OHIO

1995 Term

To-wit: November 22, 1995

State of Ohio, Appellant,	:	Case No. 94-1483
v.	:	JUDGMENT ENTRY
Gary Beeman, Appellee.	:	APPEAL FROM THE COURT OF APPEALS

This cause, here on appeal from the Court of Appeals for Cuyahoga County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the court of appeals is affirmed consistent with the opinion rendered herein.

It is further ordered that the appellee recover from the appellant her costs herein expended; and that a mandate be sent to the Court of Common Pleas for Cuyahoga County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

COSTS:

Docket Fee, $40.00, paid by Stephanie Tubbs Jones.

(Cuyahoga County Court of Appeals; No. 67207)

"S/_____"
THOMAS J. MOYER
Chief Justice

The Constitution of the United States

AMENDMENT I

Congress shall make no law. . .abridging the freedom of speech, . . .

AMENDMENT IV

The right of the people to be secure in their persons, . . .against unreasonable searches and seizures, shall not be violated,. . .

AMENDMENT V

No person. . .shall be compelled in any criminal case to be a witness against himself,. . .

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . .

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT XIV

. . .nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

R.C. §2505.02 Final order.

An order that affects a substantial right in an action which in effect determines the action and prevents a judgment, an order that affects a substantial right made in a special proceeding or upon a summary application an an action after judgment, or an order that vacates or sets aside a judgment or grants a new trial is a final ordr that may be reviewed, affirmed, modified, or reversed, with our without retrial . . .

R.C. §2945.67 When prosecutor may appeal;

(A) A prosecuting attorney . . . may appeal as a matter or right any decision of a trial court in a criminal case . . . which decision grants a motion . . . to suppress evidence . . . and may appeal by leave of the court to which the appeal is taken any other decision, except the final verdict.

Crim. R. 12

* * *

(J) State's right of appeal upon granting of motion to return property or motion to suppress evidence

The State may take an appeal as of right . . . or from the granting of a motion to suppress evidence if, in addition to filing a notice of appeal, the prosecuting attorney certifies that: (1) the appeal is not taken for the purpose of delay; and (2) the granting of the motion has rendered the state's proof with respect to the pending charge so weak in its entirety that any reasonable possibility of effective prosecution has been destroyed.